

Plan for Services

LAFCo Boundary Change Application

Creekside Homes Annexation to the City of Arcata

1.0 Introduction.

The proposed project entails the annexation of four parcels of land into the City of Arcata boundary. The Creekside Homes parcel (APN 505-161-011) is planned for residential use. A subdivision will follow annexation to allow the development of single-family residences, a senior assisted living and memory care facility, and senior-restricted neighborhood cottage units that would provide housing for approximately 269 residents. All other parcels are planned for public use, and will not include housing.

California Government Code §56653 requires the following information to be provided during a request for boundary reorganization to a Local Agency Formation Commission (LAFCo).

(a) If a proposal for a change of organization or reorganization is submitted pursuant to this part, the applicant shall submit a plan for providing services within the affected territory.

(b) The plan for providing services shall include all of the following information and any additional information required by the commission or the executive officer:

- (1) An enumeration and description of the services currently provided or to be extended to the affected territory.***
- (2) The level and range of those services.***
- (3) An indication of when those services can feasibly be extended to the affected territory, if new services are proposed.***
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.***
- (5) Information with respect to how those services will be financed.***

2.0 Description of Level and Range of Services Currently Provided.

Sewer.

Currently, municipal wastewater treatment is not available to residents located in the unincorporated area along Foster Avenue. Domestic wastewater treatment is accomplished through private on-site septic systems. Upon annexation of the residential development site, wastewater service would be available through the City of Arcata.

Based on an analysis prepared by the project applicant, the proposed project would produce approximately 17,460 gallons per day of wastewater. Wastewater that would be generated by the project would flow to the western lift station before reaching the marsh treatment system. There is an existing sewer line along Foster Avenue adjacent to the site. Public Utility Easements benefiting the City will be required for all onsite utility infrastructure.

The proposed project, which includes the annexation of approximately 21 acres of land into the City of Arcata, will be required to pay standard sewer capital connection fees for residential

development, as well as a Wastewater Treatment Plant Offset Fee (\$160,000) negotiated through a Development Agreement with the City, which will be used to fund some of the proposed improvements to the City's wastewater treatment system.

Water.

The residential development site is located within a portion of the Humboldt County unincorporated area where municipal drinking water is not available to residents. Drinking water is generally supplied to residents from private wells. Upon annexation, drinking water would be available from the City of Arcata water system. Based on an analysis prepared by the project applicant, the proposed project would generate a demand for approximately 25,809 gallons per day of water for domestic purposes and fire flow requirements of 1,000 gallons per minute for a four hour period, or 240,000 gallons.

The residential development site is located within City of Arcata water Zone 1. There is an existing waterline on Foster Avenue to the south of the site (see Figure 2.11A [Public Facilities]). The waterline extends from Alliance Road to 17th Street, onto Q Street, and ends approximately 400 feet west of the intersection of Q Street and Foster Avenue. There is a water valve and a fire hydrant located to the south of the site on Foster Avenue. The water valve and fire hydrant are located at the northeast corner of parcel 505-171-006 (1983 Foster Avenue). Public Utility Easements (PUEs) benefiting the City will be required for all onsite utility infrastructure.

City staff indicates that the water supply distribution system is adequate to serve General Plan projected growth through 2020, and that existing storage capacity will allow most land owners to develop property within the City limits. However, the applicant will be required to pay standard water capital connection fees for residential development, as well as a cash contribution of \$56,000 negotiated through a Development Agreement with the City, which will be used to fund some of the water storage improvements planned for Zone 1 of the City's water system. The cash contribution that will be paid by the applicant through the Development Agreement is an amenity of the project and is not needed to ensure the City's water system has storage capacity to serve the project.

Fire.

The project parcels and the City of Arcata are located within the Arcata Fire District (District). The AFD district boundaries encompass 65 square miles and extend west to the Pacific Ocean, north to the Clam Beach area, east to Essex, and south to Indianola and Manila. The AFD is an all-risk fire department responsible for protecting life, property, and the environment from the hazards of fire and hazardous materials incidents, and providing emergency medical services. After annexation, the site will continue to be served by the District.

Although the proposed project will result in additional service calls and place a greater demand on fire protection services, it will not result in the need for the construction of new fire protection facilities to maintain acceptable service ratios. The Arcata Fire District currently has sufficient facilities to adequately serve the population within its District but will need to obtain additional sources of funding (e.g. taxes, grants, etc.) to maintain its current service level in the future.

Police.

The Humboldt County Sheriff's Department is responsible for law enforcement in the unincorporated area along Foster Avenue and provides service from the Sheriff's Department Eureka Main Station located at the Humboldt County Courthouse. The California Highway Patrol (CHP) is responsible for traffic enforcement services on public streets and highways within the unincorporated area. CHP traffic enforcement service is provided from the CHP Northern Division Humboldt Area office located in Arcata on Samoa Boulevard. CHP also provides other special law enforcement services, as well as mutual aid to the City of Arcata Police Department and the Sheriff's Department, upon request.

The City of Arcata Police Department provides public safety services within the City limits. Upon annexation, law enforcement services would be provided by the Arcata Police Department. The Arcata Police Department provides 24-hour police protection within Arcata. The Arcata Police Department is part of the multi-agency Standardized Emergency Management System emergency response network. The main station office is at City Hall, 736 F Street, which is approximately 1.25 miles from the residential development site. The Arcata Police Department has indicated that the proposed project, as well as other future development in the City, will impact the services they provide and the Department will ultimately need additional personnel to handle the increase in calls for service (Arcata Police Department, 2017).

Although the proposed project will result in additional service calls and place a greater demand on police protection services, it will not result in the need for the construction of new police protection facilities to maintain acceptable service ratios. The Arcata Police Department currently has sufficient facilities to adequately serve the population within its District but will need to obtain additional sources of funding (e.g. taxes, grants, etc.) to maintain its current service level in the future.

Recreation.

The City of Arcata maintains a network of parks distributed throughout the City. Arcata's parks have varied facilities and offer many recreational and educational opportunities. The State of California guidelines establish a ratio of at least five acres of parkland for each 1,000 residents of the State. Arcata's existing park system, according to the 2010 Arcata Park and Recreation Master Plan, contains 3,744 acres of parkland at 41 sites. Based on the City's current population of 18,374 (CA DOF, 2017), there is approximately 4.83 acres of developed parks and 198.94 acres of undeveloped park reserves per 1,000 residents in the City.

The existing parks closest to the residential development site are Westwood Manor Park, Ennes Park, and Shay Park. Ennes Park, located at 1851 Stewart Avenue (APN 505-284-010), was recently redeveloped by the City to contain a jungle gym, wiggly board, spinner pod, a see-saw type structure, and a corn hole court. The City has also purchased land to the west, for future expansion of Ennes Park (APN 505-151-009).

Roads.

The proposed residential development will be located northwest of the central grid of the Arcata central business district. The residential development site abuts the south-western border of the Westwood neighborhood. The site is adjacent to the City's western boundary, west of Alliance Road. The most relevant road segments are discussed below:

- Alliance Road between 13th Street and Westwood Court. Alliance is a primary north-south arterial connecting the central business district to the primarily residential neighborhoods to the north. Alliance is a two-lane road with one travel lane in each direction. There are painted medians and left turn pockets leading up to intersections. The streets intersecting this segment include 17th Street, M Street/15th Street, L Street/14th Street, Foster Avenue, and Westwood Court. There are striped bicycle lanes in both travel directions. Sidewalks are also present along the entire segment. There is a crosswalk across Alliance Road at 16th Street, two crosswalks along Alliance Road at the Foster Avenue and Alliance Road intersection (4-way stop), and a crosswalk across Alliance Road south of Westwood Court.
- K Street between 11th Street and 13th Street. Alliance Road turns into K Street as it crosses 13th Street in the southbound direction. This segment is two blocks and only two lanes of travel, one in each direction. Traffic along K Street is uncontrolled. Traffic approaching Alliance Road from 11th, 12th and 13th is controlled with stop signs. The bicycle lanes striped along Alliance Road continue to 11th Street. There are crosswalks along both sides of this segment with two crosswalks along K Street at the 11th Street and K Street intersection (4-way stop).
- Foster Avenue between Alliance Road and Sunset Avenue. This segment of Foster Avenue was recently extended from Eastern Avenue to Sunset Avenue. Previously Eastern and Western Avenues were used to connect Alliance Road and Highway 101. This segment is now approximately 0.33 miles long with two lanes of travel, one lane in each direction. There are striped bicycle lanes in both travel directions and a multi-use trail occurs parallel to Foster Avenue along this segment. Sidewalk also exists on the south side of this segment in the area of the bus stop. Foster Avenue ends at a roundabout at Sunset Avenue near the Arcata skate park.

Drainage/Storm water Collection

The residential development site (APN 505-161-011) is not currently connected to a municipal stormwater system. Stormwater runoff at the site currently infiltrates on-site or drains into Janes Creek or into the drainage ditches along the rail bed which ultimately drain into Janes Creek. Consistent with requirements of the State Water Resources Control Board (SWRCB) and City of Arcata, the proposed project will be required to manage stormwater runoff on the project parcels and will not be connected to the City of Arcata stormwater infrastructure.

Street Lighting.

The residential development site (APN 505-161-011) is a former mill site with no light sources except indirect lighting emanating from adjacent residential neighborhoods. The parcels proposed for the off-site improvements are primarily open fields with no on-site light sources.

Solid Waste Collection.

Residences within the City of Arcata, and the unincorporated area in the vicinity of Foster Avenue, can receive curbside solid waste collection services from the City's franchise contractor, Recology Arcata. The site is not currently contracted with Recology, but will use Recology's services once it is developed.

The Humboldt Waste Management Authority waste transfer facility was designed to accommodate the solid waste stream countywide, both current and anticipated, for the next 25

years. The increases in solid waste that would be generated by the proposed project, approximately 690.6 pounds per day (126 tons per year), could be accommodated by the HWMA transfer station, which is currently operating below capacity.

3.0 Discussion of Required Site Improvements.

Water.

The proposed project would result in the development of 89 residential units and a 100-bed assisted living facility. The proposed project would include the installation of a water distribution system, meters, and service lines to new residential units and the assisted living facility. Domestic water would be provided by the City of Arcata.

Wastewater.

The proposed project, which includes the annexation of approximately 21 acres of land into the City of Arcata, will be required to pay standard sewer capital connection fees for residential development, as well as a Wastewater Treatment Plant Offset Fee (\$160,000) negotiated through a Development Agreement with the City, which will be used to fund some of the proposed improvements to the City's wastewater treatment system. The project will require the expansion of wastewater conveyance facilities including tie-ins to the existing sewer lines adjacent to the residential development site (APN 505-161-011). The installation of the wastewater conveyance infrastructure to serve the project would result in physical impacts to project parcels and public right-of-way.

Recreation.

It is proposed to develop park facilities on City owned parcels 505-151-009, 505-284-009, and 505-284-010 (Ennes Park Expansion) to provide the parkland necessary to serve the proposed project and the Westwood neighborhood. The applicant will be responsible for the payment of in-lieu fees for approximately 1.35 acres of this new parkland.

Site Drainage.

Currently, the majority of the residential development site is covered in compacted gravel fill, which exhibits low to moderate infiltration. Development of the residential development site will create new impervious surfaces (e.g. buildings, pavement, etc.) and has the potential to increase the amount of surface runoff. Approximately 12 acres will be developed throughout the entire 16-acre residential development site. Of the developed area, approximately 6.28 acres will be impervious surfaces consisting of residential structures, roads, parking areas, and sidewalks. This increase in impermeable surface has the potential to increase the rate of runoff and the volume generated during storm events.

Stormwater drainage facilities for the development are required to be designed to meet both State and local stormwater regulations which are focused on maintaining or improving a site's pre-development runoff characteristics. A Stormwater Management Assessment has been completed by SHN and can be provided upon request. The Plan concludes compliance with State and local stormwater regulations will be achieved by the on-site management of stormwater through low impact development (LID) site design measures including soil quality improvement and maintenance, tree planting and preservation, vegetated swales, porous

asphalt, stream setbacks and buffers, and rain gardens, which will retain the majority of runoff onsite.

Roads.

The project would develop parcel 505-161-011 with 89 residential units and a 100-bed assisted living facility that would providing housing for approximately 269 residents. Access to the residential development site is provided from Foster Avenue. There are currently two gated access roads to the site off of Foster Avenue. The existing access in the southwest corner of the residential development site will be redesigned to provide a new entry off of Foster Avenue. This entry would cross the Simpson Mill Spur rail bed and is proposed to be designed as a “T” type intersection.

Other access improvements proposed as part of the project include the following: 1) connection of Foster Avenue over Janes Creek that will include sidewalks and bike lanes; 2) a “T” type intersection at the intersection of Foster Avenue/Q Street; 3) public internal streets and sidewalks on the residential development site; 4) an all-weather emergency access to Stewart Avenue; and 5) a pedestrian and bicycle pathway connecting the eastern boundary of the residential development site to Alliance Road.

The City of Arcata commissioned W-Trans to conduct a comprehensive traffic study to address the cumulative impacts associated with the potential development of six sites located in central Arcata within three-quarter of a mile of one another. The W-Trans study can be provided upon request. The results of the traffic study include estimated trip generation and distribution, changes in Level of Service (LOS), and potential impact on alternative modes of transportation from the proposed project.

The specific recommendations contained in the W-Trans Traffic Study take into consideration all of the scenarios analyzed in the Traffic Study for the proposed project in combination with the five other projects included in the study. To minimize the traffic impacts of the proposed project, the applicant is required to pay a fair share proportion of the following near-term and future improvements recommended in the W-Trans Traffic Study or as required by the City of Arcata:

- Sunset Avenue/LK Wood Boulevard Re-Striping (Near-term)
- Re-Stripe Alliance Road & Foster Avenue Approaches (Near-term)
- Roundabout at Sunset Avenue/LK Wood Boulevard Intersection (Future)
- Roundabout at Foster Avenue/Alliance Road Intersection (Future)

In order to fund these transportation improvement projects, a Traffic Impact Mitigation Fee Collection Program or equivalent will be established by the City of Arcata. The anticipated total cost of these improvements are listed below in Table 3-10 (Anticipated Transportation Improvements Project Costs), including the percent of the total cost of the improvements that will be funded by the traffic impact mitigation fees. As shown in Table 1, the six projects analyzed in the W-Trans Traffic Study will be responsible for \$911,900 of the cost of the transportation improvements. Of this amount, the Creek Side Homes project is estimated to be responsible for approximately 20.5%, or \$186,940. This fee is included as *Mitigation Measure 3.1a* of the adopted Environmental Impact Report prepared for the project.

Table 1: Anticipated Transportation Improvement Project Costs

Transportation Improvement Projects	Cost	Percent of Project Cost included in Fee
Near Term		
Sunset Ave/LK Wood Blvd Re-Striping	\$98,900	100%
Alliance Rd/Sunset Ave Re-Stripe	\$8,800	100%
Future		
Sunset Ave/LK Wood Blvd Roundabout	\$3,195,000	15%
Foster Ave/Alliance Rd Roundabout	\$325,000	100%
TOTAL	\$3,627,700	\$911,900

Source: *Creekside Homes EIR, SCH # 2016022083*

Development of the proposed park area will generate additional traffic on Stewart Avenue and Wyatt Lane. Since the park will be constructed next to an existing residential neighborhood and the proposed residential development, it is anticipated that many residents will walk or bike to the park, which will reduce the amount of vehicle trips generated during long-term operation of the park. Moreover, the existing City Park located in this area (Ennes Park) is relatively undersized for the number of residents that it serves. The development of the proposed park will provide the recreational facilities necessary to adequately serve the existing and proposed residential population in this area of Arcata. As such, it is not anticipated that significant traffic impacts will result from development of the proposed park that would require improvements to the existing roadways.

Fire Protection and Police Services.

The Arcata Fire District indicated that, due to the expiration of a federal grant, the District had to cut several positions in 2017. In addition, the proposed project will need to be served by the District's ladder truck, which is approaching the end of its 20-year service life, and there is currently no funding to replace it. As such, the District has indicated that future development in the District will impact the services they provide (Arcata Fire District, 2017).

Recreation/Parkland.

The new residents from the proposed project would be expected to increase the demand for local parks and recreational services. Other City park and recreational facilities such as the Plaza, Community Center, Community Forest, and playing fields would also experience increases in use from project residents.

The project does not include on-site park facilities. Instead, park facilities are proposed to be provided off-site on City property that is planned for the future expansion of Ennes Park (APNs 505-151-009, 505-284-009, and 505-284-010). Section 9.86.030 (Park Land Dedications and Fees) of the Arcata Land Use Code allows the payment of fees to the City for parkland development for projects that do not provide park facilities on-site. Section 9.86.030(D) contains a formula for determining the amount of parkland required which is based on the

number of residential units proposed and the average number of persons per dwelling unit per the most recent Federal census.

This formula was not used to determine the parkland requirement for the project because the 100 assisted living units will each have one bed which does not correlate with the average number of residents per household in the City. As such, the amount of parkland proposed by the project is based on the City's general standard of five acres of parkland per 1,000 persons. This results in a required parkland area of 1.35 acres for the estimated 269 residents. To provide the parkland necessary to serve the proposed residential development, the applicant will pay park in-lieu fees for the development of 1.35 acres of parkland on City-owned parcels 505-151-009, 505-284-009, and 505-284-010.

Lighting.

The proposed project would alter light sources on the residential development site; from a dark, undeveloped field adjacent to farmlands with some indirect light emanating from nearby residences, to an illuminated neighborhood with lighting that complies with the Arcata Land Use Code requirements. The proposed project includes various sources of new lighting (street, pedestrian-scale, security, and buildings). The proposed project also includes new off-site street lighting at the new "T" intersection of Foster Avenue and Q Street that would be developed as part of the proposed project.

To limit potential impacts, compliance with the standards and policies of the City of Arcata for street lighting shall be required and all street lights shall be fully hooded and back shielded to reduce light spillage and glare, and to ensure an illumination level standard of one-foot candle is not exceeded on nearby residential properties (Arcata Land Use Code Section 9.30.070 [Outdoor Lighting]). The City will be responsible for the installation of new streetlights at the intersection of Foster and "Q" Streets.

4.0 Discussion of Timing and Financing of Improvements.

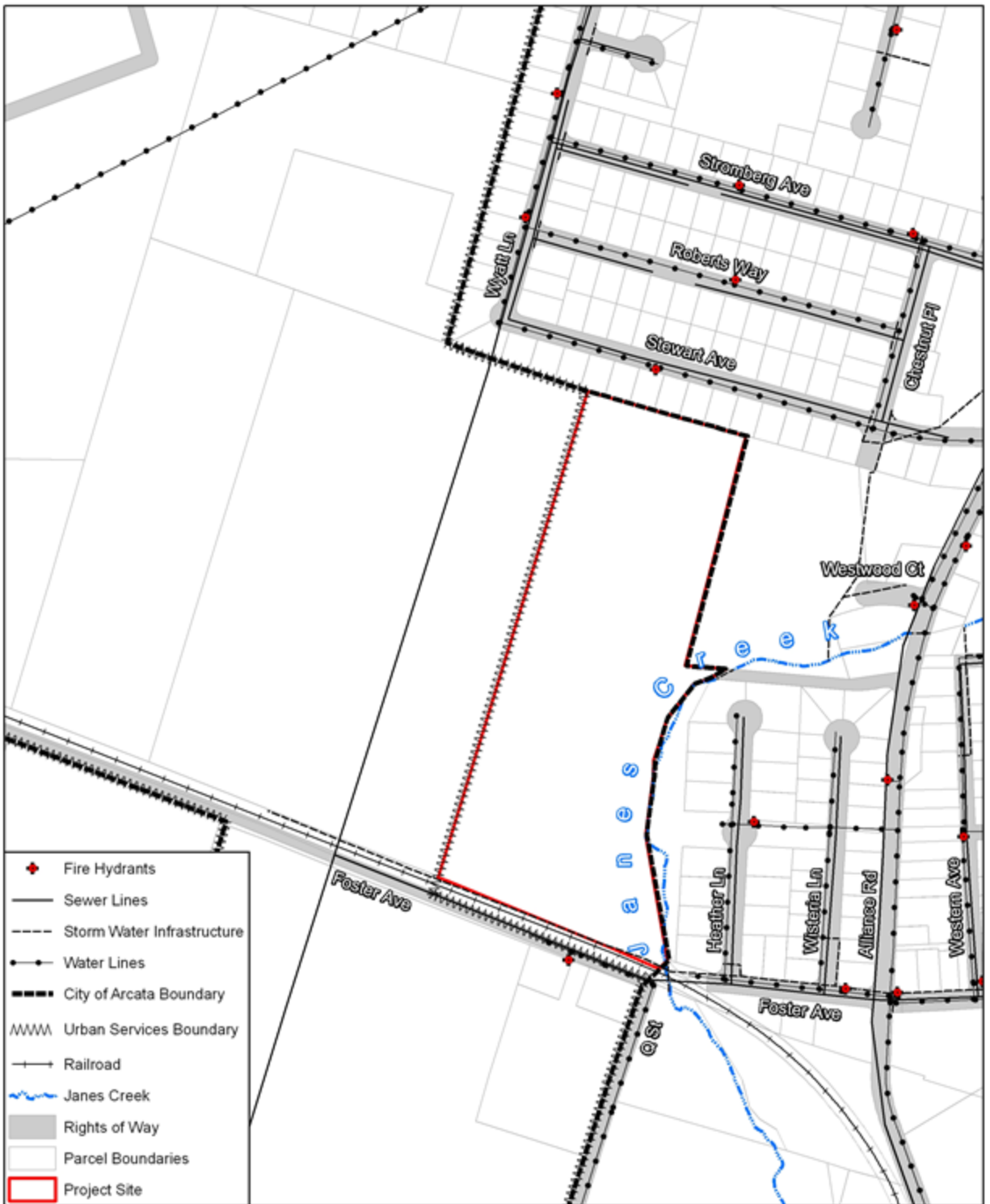
The project's impact to water, wastewater, and road infrastructure will be offset through the following fees to be paid to the City prior to construction, as outlined in the attached Development Agreement, which is included as Attachment C of this Plan for Services. A Fiscal Analysis has been prepared for the project and is included as Attachment L of the LAFCo application packet.

- The applicant will be required to pay standard sewer capital connection fees for residential development, as well as a Wastewater Treatment Plant Offset Fee (\$160,000) negotiated through a Development Agreement with the City, which will be used to fund some of the proposed improvements to the City's wastewater treatment system.
- The applicant will be required to pay standard water capital connection fees for residential development, as well as a cash contribution of \$56,000 negotiated through a Development Agreement with the City.

- The applicant is responsible for approximately 20.5% of the roadway improvements recommended in the above-referenced W-Trans Study, totaling \$186,940.

Exhibit 1-Creekside Homes Public Facilities and Services

Creekside Homes Annexation Public Facilities and Services



Map Compiled by Planwest Partners
April 11, 2006

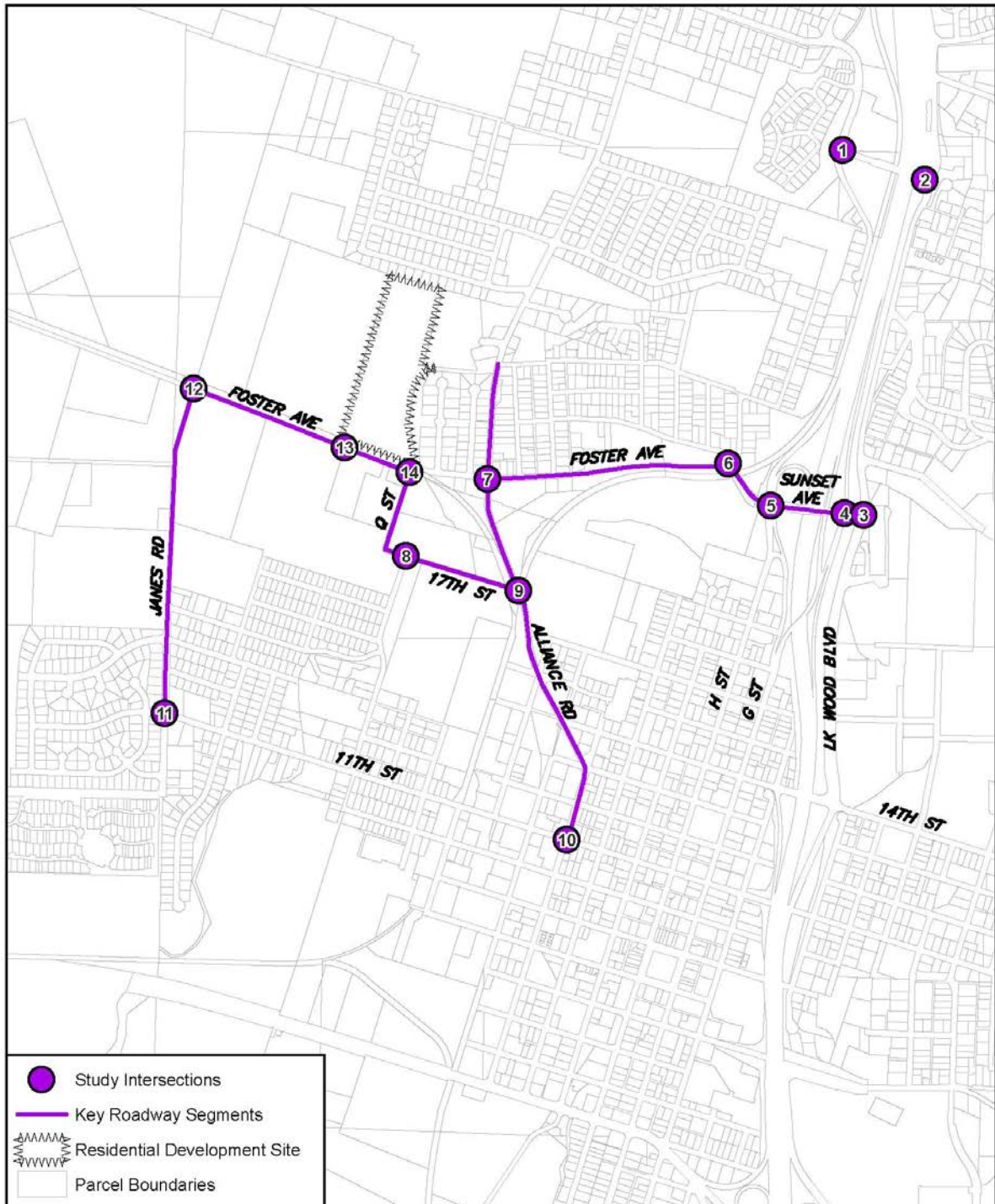
0 250 Feet



PLANWEST
PARTNERS

Exhibit 2-Creekside Homes Annexation Circulation

Creekside Homes Annexation Circulation



Map Compiled by:
Streamline Planning Consultants
May 2017

0 500 1,000 Feet



Exhibit 3-Executed Development Agreement

2020-009844

RECORDING REQUESTED BY:
Director of Community Development
When Recorded Mail Document To:

City of Arcata
City Clerk
736 F St.
Arcata, CA 95521

Recorded - Official Records
Humboldt County, California
Kelly E. Sanders, Recorder
Recorded by: ARCATA CTY

Pages: 23

Recording Fee: \$ 79.00
Tax Fee: \$0
Clerk: tn Total: \$79.00
Jun 18, 2020 at 09:42:13



SPACE ABOVE THIS LINE FOR RECORDER'S USE

This document is exempt from payment of (i) a recording fee per Government Code §27383, and (ii) the Building Homes and Jobs Trust Fund fee per Govt. Code §27388.1(a)(2)(D)

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ARCATA AND FOSTER AVE, LLC

This Development Agreement (herein the “**Agreement**”) is entered into by and between the City of Arcata, a municipal corporation (“**City**”), and Foster Ave, LLC (“**Developer**”), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. The City and Developer are each individually called a “**Party**” and collectively called the “**Parties**” to this Agreement.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (herein the “**Development Agreement Statute**”), which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project establishing certain development rights in the property which is the subject of the development project application.

B. In accordance with Government Code Sections 65864 et seq., the City has adopted Ordinance No. 1395 codified in the City’s Land Use Code at section 9.72.110, Title IX of the Arcata Municipal Code, incorporated herein by this reference, establishing rules, regulations, procedures and requirements for consideration of development agreements, (the “**Enabling Ordinance**”).

C. Developer is the owner in fee of that certain real property consisting of approximately 16 acres located at 2000 Foster Avenue, in unincorporated Humboldt County, Assessor’s Parcel Number (APN) 505-161-011 more particularly described in Exhibit A (the “**Property**”).

D. Developer proposes the annexation, redesignation/rezoning, and subdivision of the Property to allow for development of 32 single-family residences and 32 accessory dwelling units, an assisted living/memory-care facility with 100 care beds, and 25 senior-restricted

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neighborhood cottage units. The Project would provide housing for approximately 269 residents. The Project also includes the annexation of 0.74 acres of the Developer-owned adjoining parcel (APN 506-161-009) for development of bike and pedestrian trail infrastructure, the near-by property owned by the City (APN 505-151-009) for recreational park expansion (“**Ennis Park Expansion Parcel**”), and a portion of the rights-of-way for Foster Avenue and Q Street that are currently in Humboldt County jurisdiction.

Project features to be developed on the Property will include a stream protection zone along Janes Creek, a wetland mitigation area, landscaping, pedestrian/bicycle trails, and the development and dedication of public infrastructure (access roads, utilities, stormwater facilities, etc.). Offsite improvements will include parkland development to the north west of the residential development site, an emergency access road to Stewart Avenue, pedestrian/bicycle trails, and the connection of Foster Avenue over Janes Creek which will include sidewalks, bike lanes, and a "T" type intersection at Q Street and Foster Avenue. Finally, Developer proposes to convey a conservation easement over an adjoining parcel as mitigation for the conversion of prime agricultural lands. The development, improvements, and mitigations described in this Recital D are depicted in Exhibit 3, Project Site Map, to the City Council Approval Action adopted on February 5, 2020, incorporated herein by reference.

E. The City has determined that the Project is consistent with the goals and policies of its General Plan: 2020 and includes appropriate standards and requirements with respect to the development of the Property. Prior to its approval of this Agreement, the City considered the environmental impacts of the Project and completed its environmental review of the Project. On February 5, 2020, and in accordance with the recommendation of the City’s Planning Commission made November 12, 2019, the City Council made all required statutory findings and voted to certify the Final Environmental Impact Report as adequate before also approving the Project.

F. This Agreement is intended to be, and should be construed as, a development agreement within the meaning of the Development Agreement Statute and Enabling Ordinance. City and Developer have determined that the Project is a development for which a Development Agreement is appropriate. This Agreement will provide Developer certain rights to develop the Project on the Property and will provide public benefits to the City and its residents as identified herein. City and Developers have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development of the Property subject to the conditions and requirements set forth herein.

G. The City Council of the City of Arcata has taken testimony regarding all aspects of the Project, including this Development Agreement, at public hearings on December 18, 2019, January 21, 2020, and February 5, 2019.

H. On April 1, 2020, the City Council adopted Ordinance No. 1524 (“**Enacting Ordinance**”) approving this Agreement and authorizing its execution. The Enacting Ordinance became effective on May 1, 2020, and is incorporated herein by reference.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises recited herein and incorporated by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

Section 1. PROJECT AND PROPERTY SUBJECT TO THIS AGREEMENT

The Property:. Developer holds fee title to the Property on which the Project will be developed, as well as the Appurtenant Trail Parcel and the Conservation Easement Parcel to mitigate the conversion of agricultural land due in large part to the annexation of the Ennes Park Expansion Parcel.

The Project:

1.1 Project Approvals to Date. Developer has secured or applied for various environmental and land use approvals, entitlements, and permits relating to the development of the Project. These include, without limitation, the following, which documents are on file with the City Clerk and incorporated herein by reference as set forth:

1.1.1 Environmental Impact Report. On February 5, 2020, and in accordance with the recommendation of the City's Planning Commission made November 12, 2019, the City Council made all required statutory findings and certified the Final Environmental Impact Report for the Project (Resolution 190-37).

1.1.2 Annexation. Authorization to annex the Property, Appurtenant Trail Parcel, and the Ennes Park Expansion Parcel was approved by the City Council on February 5, 2020 (Resolution 190-39).

1.1.3 General Plan Amendment. An amendment to the City's General Plan to establish the land use designation as Residential Low Density (RL) on the Property, the Ennes Park Expansion Parcel as Public Facilities (PF), as well as several amendments to figures throughout the General Plan to establish consistency among figures for the newly annexed land was approved by the City Council on February 5, 2020 (Resolution 190-45).

1.1.4 Zoning. Zoning of the annexed Property RL with a Planned Development Combining Zone (PD), Ennes Park as PF, and additional zoning associated with various roads and trails that will be annexed was adopted by the City Council on February 19, 2020 (Ordinance 1523).

1.1.5 Planned Development Permit. The Planned Development Permit was approved by the City Council on February 5, 2020.

1.1.6 Minor Subdivision. The Property was approved for a Minor Subdivision by the City Council on February 5, 2020.

1.2 Subsequent Approvals. Applications for land use approvals, entitlements, and permits in addition to Project Approvals and necessary or desirable for the development of the Project (“**Subsequent Approvals**”) will be made by Developer. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals and final subdivision map approval, a Major Subdivision, Design Review Permits, and Planned Development (PD) permits. The Subsequent Approvals shall be subject to City review and approval consistent with Applicable Law and shall tier environmental review from the Project EIR if additional future discretionary approvals are required.

Section 2. DEFINITIONS. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

“**Approval Action**” means the action of the City Council approving the Project taken on February 5, 2020, “Action of the City Council for the Creekside Homes,” File No: 156-170-ANX-TM-ZA-GPA-PD, on file with the City’s Community Development Department.

“**Applicable Law**” has the meaning set forth in Section 6.3 of this Agreement.

“**Appurtenant Trail Parcel**” means the bicycle and pedestrian trail infrastructure to be constructed by Developer on 0.74 acres of Developer-owned property adjoining the Property identified as Assessor’s Parcel Number (APN) 506-161-009 (total parcel size = 0.94 acres) pursuant to the Conditions of Approval.

“**CEQA**” means the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* (“CEQA”), as implemented by the CEQA Guidelines (Cal. Code Regs, tit. 14, § 15000 *et seq.*).

“**City**” has the meaning set forth in the Preamble.

“**Conditions of Approval**” means the conditions specified in Exhibit C to the Approval Action.

“**Conservation Easement Parcel**” means the real property identified by Assessor’s Parcel Number (APN) 505-151-001 which will be encumbered by a conservation easement conveyed to a land trust or other qualified entity for purposes of mitigating the conversion of agricultural land due in large part to the annexation of Ennes Park Expansion Parcel.

“**Defaulting Party**” has the meaning set forth in Section 8.1 of this Agreement.

“**Developer**” has the meaning set forth in the Preamble.

“**Draft EIR**” means the draft environmental impact report dated June 2019, State Clearinghouse No. 2016022083, together with all appendices, supporting technical memoranda, studies, and data, prepared for the Project in compliance with CEQA, and on file with the City’s Community Development Department.

“**Effective Date**” means the effective date of the Enacting Ordinance adopting the Development Agreement.

“Enacting Ordinance” has the meaning set forth in Recital H.

“Ennis Park Expansion Parcel” has the meaning set forth in Recital D of this Agreement, as depicted in Exhibit B (Project Site Map).

“Expiration Date” has the meaning set forth in Section 3.1 of this Agreement.

“Final EIR” means the following reports together with all appendices, supporting technical memoranda, studies, data, comments and findings prepared for the Project in compliance CEQA and both certified and adopted by the Arcata City Council through Resolution 190-37 on January 17, 2020: 1) final environmental impact report, dated October 17, 2019, SCH #2016022083; and, 2) Findings of Fact and Statement of Overriding Considerations dated November 17, 2019.

“General Plan” means the City of Arcata General Plan: 2020.

“HSU” means Humboldt State University.

“Land Use Code” means the City of Arcata zoning ordinance, codified as Title IX of the Arcata Municipal Code.

“Major Amendment” has the meaning set forth in Section 11.4.1 of this Agreement.

“Minor Amendment” has the meaning set forth in Section 11.4.1 of this Agreement.

“Non-defaulting Party” has the meaning set forth in Section 8.1 of this Agreement.

“Party” or **“Parties”** means the City and/or Developer.

“Project” means the development of the Property as described in Section 1 and Recital D of this Agreement, including the construction of associated improvements, infrastructure, and mitigations located within or outside of the Property, the conveyance of dedications and easements, and the payment of all fee exactions, all as subject to the terms of this Agreement and Project Approvals.

“Project Approvals” means any existing or necessary land use, zoning, site plan or subdivision approvals and all other approvals and entitlements required for the development of the Project, including, but not limited to, General Plan amendments, conditional use permits, grading permits, building permits, lot line adjustments, encroachment permits, business licenses, vesting parcel maps, vesting tentative subdivision maps and subdivision improvement agreements and any accompanying conditions of approval that will accomplish the goals, objectives, policies and plans referenced, described, implied and shown in this Agreement at Section 1.2.

“Project EIR” means the means both the Draft EIR and Final EIR.

“Property” has the meaning set forth in Recital C and Exhibit A.

“Subsequent Approvals” means any existing or necessary land use, zoning, site plan or subdivision approvals and all other approvals and entitlements required for the development of the Project, including, but not limited to, General Plan amendments, conditional use permits, lot line adjustments, vesting parcel maps, vesting tentative subdivision maps and subdivision improvement agreements and any accompanying conditions of approval that will accomplish the goals, objectives, policies and plans referenced, described, implied and described in this Agreement at Section 1.3.

“Term” has the meaning set forth in Section 3.1 of this Agreement.

“Traffic Fee” means the fee paid by Developer to the City in satisfaction of Mitigation Measure 3.1a of the Project EIR, which represents Developer’s fair share proportion of near term and future transportation improvements in the amount of One Hundred Eighty Six Thousand Five Hundred Ninety Dollars (\$186,590) as identified in the Central Arcata Areawide Traffic Study, submitted by W-Trans Mar 13, 2017, Draft EIR Appendix T-1.

“Wastewater Improvement Fee” means the fee paid by Developer to the City to fund a fair share proportion of future improvements to the City’s wastewater treatment system necessary to accommodate the anticipated increase in residential population occurring from the Project’s upzoning and annexation.

Section 3. Term.

3.1 Term of Agreement. The **“Term”** of this Agreement shall commence upon the Effective Date and shall extend for a period expiring upon the tenth (10th) anniversary of the Effective Date (the **“Expiration Date”**), unless terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties thereto, subject to the amendment provisions of Section 11.4 of this Agreement. The term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property and obtain the public benefits of the Project. The City finds that a term of such duration is reasonably necessary to assure the City of the realization of the public benefits from the Project. In establishing and agreeing to such term, the City has determined that this Agreement incorporates sufficient provisions to permit the City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals in undertaking actions to carry out the Project.

3.2 Term of Project Approvals and Subsequent Approvals. All Project Approvals and all Subsequent Approvals relating to the Property or any portion thereof, including modifications or amendments thereto, shall be extended to the later of: (i) the expiration of the Term, or (ii) the date provided by applicable law.

3.3 Extended Term. Provided Developer is not in default under the terms of this Agreement, the Term of the Agreement may be extended as mutually agreed.

3.4 Tolling and Extension During Legal Challenge. In the event that this Agreement or any of the Project Approvals or the EIR or any subsequent approvals or permits required to implement the Project Approvals are subjected to legal challenge by a third party, other than Developer, and Developer is unable to proceed with the Project due to such litigation, or

Developer gives written notice to City that they are electing not to proceed with the Project until such litigation is concluded, as further described in this section, then, the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developer, be extended and tolled during such litigation until the entry of final order or judgment upholding this Agreement and/or Entitlements, or the litigation is dismissed by stipulation of the parties. The date such tolling shall commence is the date Developer provides written notice to the City that a tolling event under this paragraph has occurred. The tolling shall cease when such litigation is resolved, and the Term of this Agreement shall not be further extended under this provision. Determination of the date litigation is resolved shall be the date the court of final jurisdiction enters its final disposition of the case, such as entry of an order, judgment or final decision.

Section 4. OBLIGATIONS OF DEVELOPER.

4.1 The Parties acknowledge and agree that the execution of this Agreement by the City is material consideration for Developer's acceptance of, and agreement to comply with, the terms and conditions of the Project Approvals and (as and when they are issued) Subsequent Approvals.

4.2 Developer agrees to comply with all Project Approvals, including without limitation all Conditions of Approval, and (as and when they are issued) all Subsequent Approvals.

4.3 Developer agrees to collaborate with and support the City in the application for annexation of both the Property (APN 505-161-011) and the Ennis Park Expansion Parcel (APN 505-151-009), including, without limitation, preparation of annexation application materials as requested by the City, and reimbursement to the City for its costs associated with the annexation application and proceeding.

4.4 Prior to the issuance of any certificate of occupancy for the Project, Developer agrees to pay to the City the Wastewater Improvement Fee in the amount of One Hundred Sixty Thousand Dollars (\$160,000) as outlined in the City's Wastewater Treatment Memo dated June 23, 2017, Draft EIR, Appendix S. This fee will be used to update the General Plan for the next 20 year planning period.

4.5 Prior to the issuance of any building permits for the Project infrastructure improvements, Developer agrees to pay to the City 50% of the Traffic Fee, in the amount of Ninety Three Thousand Two Hundred Ninety Five Dollars and Zero Cents (\$93,295.00). Developer agrees to pay the remaining 50% (\$93,295.00) at the earlier of either: 1) prior to issuance of certificate of occupancy for the first phase of the housing component of the Project, or 2) upon notice from the City that the City is prepared to install any of the future traffic mitigation projects identified in the Central Arcata Areawide Traffic Study, submitted by W-Trans Mar 13, 2017, Draft EIR Appendix T-1.

4.6 Developer agrees that the memory care facility to be constructed on the Property shall be constructed to meet the LEED (Leadership in Energy and Design) Gold or better green building residential rating. The building need not be officially certified as such to be

deemed to have met this rating. Developer will submit evidence of meeting this requirement to the satisfaction of the Community Development Director.

4.7 No later than the sooner of 1) the issuance of any certificate of occupancy for the first phase of the Project, or 2) one year after the Effective Date of this Agreement, Developer agrees to encumber approximately 22.65 acres of the Conservation Easement Parcel with a conservation easement that protects the agricultural values of the Conservation Easement Parcel in perpetuity. The conservation easement shall be conveyed to a land trust or other entity qualified to hold conservation easements under California Civil Code §§ 815 *et seq.* If Developer's best efforts, as determined in the discretion of the City's Community Development Director, indicate that completion of this obligation is not permissible, then no later than the time limit for encumbering the Conservation Easement Parcel with a conservation easement, Developer shall restrict future use and development of the Conservation Easement Parcel to agricultural purposes through recordation of an appropriate deed restriction. The form of said deed restriction shall be subject to the advance approval of the City.

4.8 Concurrent with the Minor Subdivision Final Map, Developer agrees to record a deed restriction on the Conservation Easement Parcel that reserves an emergency easement access from the Property to Stewart Avenue. The form of said deed restriction shall be subject to the advance approval of the City.

4.9 No later than the sooner of 1) the issuance of any certificate of occupancy for the first phase of the Project, or 2) one year after the Effective Date of this Agreement, Developer agrees to acquire legal interest in the property located at 2201 Alliance Road (APN 505-341-048) sufficient to develop a public pedestrian and bike ingress and egress trail. If Developer's best efforts, as determined in the discretion of the City's Community Development Director, indicate that completion of this obligation is not permissible, then no later than the time limit for obtaining said legal interest, Developer shall notify the City. In the discretion of the Community Development Director, the Developer may be permitted to amend the project description to develop an alternative to meeting the purposes of this obligation. Adequate completion of said alternative obligation shall be deemed satisfaction of this obligation.

Section 5. OBLIGATIONS OF THE CITY.

5.1 In consideration of the Developer entering into this Agreement, the City agrees that it shall comply with all Project Approvals and shall cooperate with processing all applications for the Subsequent Approvals in a timely and expeditious manner. Accordingly, to the extent that the applications and submittals are in conformity with the Project Approvals and this Agreement, City agrees to diligently and promptly accept, review and take timely action on all subsequent applications and submittals made to City by Developer in furtherance of the Project. Similarly, City shall promptly and diligently review and approve improvement plans, conduct construction inspections and accept completed facilities.

5.2 The City agrees to recognize the CEQA baseline projected using buildout of the Project Approvals for consideration of the potential effect of Subsequent Approvals, and to allow Subsequent Approvals, if discretionary, to tier from the Project EIR.

5.3 The City agrees to accept the Wastewater Improvement Fee and retain it in a segregated account to pay for future planning or development needs of the wastewater treatment system, including for General Plan updates and associated environmental review addressing future population growth and sewer treatment needs. These funds shall neither be refundable nor subject to return, but may not be used for any purpose other than the purpose for which they were collected.

5.4 The City agrees to accept the Traffic Fee and retain it in a segregated capital facilities account to pay for the future traffic mitigation improvements identified in the Central Arcata Areawide Traffic Study, submitted by W-Trans Mar 13, 2017, Draft EIR Appendix T-1. Any funds collected may be added to any future traffic mitigation impact fee programs and may be combined with other public and private funding sources to make the traffic mitigation improvements. These funds shall neither be refundable nor subject to return, but may not be used for any purpose other than the purpose for which they were collected.

5.5 The City agrees to reasonably cooperate with Caltrans and HSU to fund, design, and install the LK Wood and Sunset traffic improvements, including the re-striping and roundabout, as referenced in Mitigation Measure 3.1a of the Project EIR, and the Central Arcata Areawide Traffic Study, submitted by W-Trans Mar 13, 2017, Draft EIR Appendix T-1.

Section 6. DEVELOPMENT OF THE PROPERTY.

6.1 General. Other than as expressly set forth in this Agreement, the terms and conditions of development applicable to the Property, including but not limited to the permitted uses of the Property, the density and intensity of the use(s), maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes, and provisions for all the constriction and installation of public improvements, shall be those set forth in the General Plan and Land Use Code and all other ordinances, laws, statutes, rules, regulations, and official policies governing development in effect as of the Effective Date of this Agreement.

6.2 Vested Right to Develop. During the Term of this Agreement, Developer shall have the vested right to develop the Property in accordance with the uses permitted or conditionally permitted in the City's General Plan and Land Use Code as of the Effective Date of this Agreement; specifically, and subject to the provisions and conditions of this Agreement, City agrees that City is granting, and grants herewith, a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement, the Project Approvals and all of the rules, regulations, ordinances, specifications, standards, and officially adopted policies in force as of the Effective Date, including, but not limited to the City of Arcata Municipal Code.

6.2.1 Uniform Codes. Recognizing the importance of complying with current safety standards for long-term projects, the City may apply then current Uniform Building Code and other uniform commercial codes to the Project throughout the term of this Agreement, provided that the provisions of such uniform codes shall apply to the Project only to the extent that the applicable code is in force and effect on a City-wide basis.

6.2.2 Other Permits and Licenses. Permits and licenses not specifically regulated by the City's Land Use Code shall be governed by the applicable ordinance, code, regulation or policy then in effect, provided that the applicable ordinance, code, regulation or policy is in force and effect on a City-wide basis.

6.3 Applicable Law. Except as provided in Sections 6.2.1 and 6.2.2 of this Agreement regarding uniform codes and other permits and licenses, and Section 7 of this Agreement regarding fees and exactions, the rules, regulations, official policies, standards and specifications applicable to the Project, the "**Applicable Law**" shall be that as set forth in the Project Approvals and (as and when they are issued) the Subsequent Approvals and, with respect to matters not addressed by this Agreement, those rules, regulations, official policies, standards, specifications contained in the City's Land Use Code in force and effect on the Effective Date of the Agreement.

6.4 Police Power. In all respects not provided for in this Agreement, City shall retain full rights to exercise its police power to regulate the development of the Property, including for purposes of code compliance and nuisance related issues of concern. Any future proposed uses or development requiring a new site plan, tentative tract map, use permit, variance, or other discretionary permit or approval in accordance with the City's zoning or other land use regulations shall require a new permit or approval pursuant to this Agreement, and, notwithstanding any other provision set forth herein, this Agreement is not intended to vest Developer's right to the issuance of such future permit or approval nor to restrict City's exercise of the discretion with respect thereto. Not by way of limitation of the foregoing, it is specifically understood that City reserves the right after the Effective Date to amend, pursuant to procedures provided by law and this Agreement, City laws, rules, regulations, and policies applicable to the Property as to which Developer's rights are not expressly vested and such amendment or amendments shall be binding on the Property except to the extent that the same conflict with the express provisions of this Agreement.

6.5 State and Federal Laws. By entering into this Agreement, Developer does not waive the benefit or protection of any rights it may have under applicable state or federal laws or regulations that may apply to the development of the Property from time to time, including without limitation any laws applying the laws in effect at a given time in processing land use applications such as Government Code Sections 66474.2 and 66498.1, except to the extent that applying such laws and regulations to the Property would be inconsistent with any of the express provisions of this Agreement. In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, the Parties agree to consider in good faith amending or suspending such provisions of this Agreement as may be necessary to comply with such state or federal laws, provided that neither Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption of development agreements as set forth in the Development Agreement Statute, and each Party retains full discretion with respect thereto.

6.6 Timing of Commencement of Construction and Completion. Developer shall have the vested right to develop in such order, at such rate and at such times as each Developer deems appropriate in the exercise of its business judgment.

Section 7. FEES.

7.1 Fees and Charges. Nothing set forth in this Agreement is intended or shall be construed to limit or restrict City's authority to impose new fees, charges, assessments, or taxes for the development of the Property or to increase any existing fees, charges, assessments, or taxes, and nothing set forth herein is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, assessment, or tax not in effect as of the Effective Date. In connection therewith, Developer shall pay all applicable fees and charges, assessments, and special and general taxes validly imposed in accordance with the Constitution and laws in the State of California.

Section 8. DEFAULT, REMEDIES AND TERMINATION.

8.1 Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("**Non-defaulting Party**") shall comply with the notice and cure provisions of this Section 8.1. A Non-defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Non-defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within ten (10) days after the date of such notice (for monetary defaults), within thirty (30) days after the date of such notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following:

- (i) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
- (ii) Notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;
- (iii) Promptly commences to cure the default within 'the thirty (30) day period;
- (iv) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- (v) Diligently prosecutes such cure to completion, then the Defaulting Party shall not be deemed in breach of this Agreement. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default of its obligations set forth in this Agreement if said breach or failure involves the payment of money but the Defaulting Party has failed to completely cure said monetary default within ten (10) days (or

such lesser time as may be specifically provided in this Agreement) after the date of such notice.

8.2 Default Remedies. Subject to the foregoing, in the event of a default, the Non-Defaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement by specific performance. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section 8.2, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to the Development Agreement Statute, in which event the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days after the issuance of such notice to terminate, in the manner set forth in Government Code Sections 65865, 65867, and 65868, as the same may be amended from time to time. Prior to the initiation of any litigation hereunder, the Parties agree to pursue mediation to resolve any disputes.

8.3 No Obligation to Develop. It is understood that Developer's development of the Property depends upon a number of factors including, but not necessarily limited to, the housing market, the availability of financing, and general economic conditions. Nothing in this Agreement shall be construed as requiring Developer to develop the Property, and any failure to develop the Property shall not be deemed a default by Developer of its obligations set forth in this Agreement.

8.4 Estoppel Certificate. Any party may, at any time, and from time to time, deliver written notice to any other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and is a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The City Manager shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

Section 9. ASSIGNMENT.

9.1 Transfers. Following an assignment or transfer of any of the rights and interests of Developer set forth in this Agreement, the assignee's exercise, use, and enjoyment of the Property shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

9.2 Release of Developer. Upon the written consent of City to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assumption of such assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent Developer is in default hereunder prior to said transfer.

9.3 Sale to Builders. Nothing herein shall prevent Developer from selling or transferring a portion of the Property for development subject to any approved parcel map or final subdivision map to a builder for development in accordance with the terms of this Agreement provided that the transferee(s) continue to comply with the terms of this Agreement and the Conditions of Approval of the project.

Section 10. INDEMNITY.

10.1 The Developer agrees to indemnify, defend, and hold the City, its elective and appointive boards, commissions, officers, agents, and employees harmless from and against all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement. The City shall provide Developer with notice of the pendency of any such action and request that Developer defend such action. If Developer fails to do so, the City may defend the action and Developer shall pay the cost thereof.

Section 11. MISCELLANEOUS.

11.1 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

11.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to all or part of the subject matter hereof. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

11.3 Legal Expenses. In any judicial proceeding, arbitration, or mediation (collectively, "Legal Actions") between the Parties seeking enforcement of any of the terms and provisions of this Agreement, the prevailing Party in such action shall be awarded all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Legal Actions. The right to recover such costs and expenses shall accrue upon commencement of the Legal Actions, regardless of whether the action is prosecuted to a final judgment or decision.

11.4 Amendment. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall have any force or effect unless it is set forth in writing, signed by duly authorized representatives of each of the Parties hereto, and recorded in the Official Records of the Humboldt County Recorder.

11.4.1 Major Amendment. Any amendment to this Agreement which affects or relates to (a) the term of this Agreement; (b) permitted uses of the Property; (c) the density or intensity of use of the Property or the maximum height or size of proposed buildings; (d) Project Approvals; or (e) monetary contributions by Developer, shall be

deemed a “**Major Amendment**” and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a “**Minor Amendment**” subject to Section 11.4.2 below and shall not, except to the extent otherwise required by applicable law, require notice or public hearing before the Parties may execute an amendment hereto. The Community Development Director or his or her designee shall have the authority to determine if an amendment is a Major Amendment or a Minor Amendment. Developer shall have the right to appeal the Community Development Director’s determination to the City Council.

11.4.2 Minor Amendment. The Community Development Director or his or her designee shall have the authority to review and approve amendments to this Agreement provided that such amendments are not Major Amendments. Developer shall have the right to appeal such Community Development Director approvals or disapprovals to the City Council.

11.4.3 Extensions of Time for Performance. Times of performance under this Agreement may be extended in writing by the mutual agreement of City Manager and the applicable Developer and, upon mutual consent, shall not be considered an amendment(s) to this Agreement.

11.5 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

11.6 Cooperation with Other Governmental Permits. Developers shall apply in a timely manner for any approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall cooperate with Developers (without, however, being required to be an advocate for Developers), without cost or financial obligation on the part of City, in Developers’ endeavors to obtain such permits and approvals.

11.7 Cooperation in the Event of Legal Challenge; Limitations. In the event of any legal action instituted by any third party challenging the validity or enforceability of any provision of this Agreement, the Parties hereby agree to cooperate in defending said action as set forth in this Section. City shall have the right to defend such action. City shall have no obligation to defend any such action, except that if Developer timely provides City with written notice that Developer has elected to defend the action, City shall not allow any default or judgment to be taken against it and shall not enter into any settlement or compromise of any claim which has the effect, directly or indirectly, of prohibiting, preventing, delaying, or further conditioning or impairing Developer’s rights hereunder:

Developer shall have the right, but not the obligation, to defend any such action. If Developer defends any such action, it shall indemnify, defend; and hold harmless City and City’s officials and employees from and against any claims, losses, or liabilities assessed or awarded against

City by way of judgment, settlement, or stipulation. In such event, Developer shall further have the right to settle such action, provided that nothing herein shall constitute an amendment or modification of this Agreement unless such amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto. If Developer does not defend any such action, Developer shall have no responsibility for the payment or defense of any claims, losses, or liabilities incurred by or filed against City.

11.8 Waiver. No provision or condition of this Agreement shall be considered waived unless such waiver is in writing and signed by the Party to be bound. Further, failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

11.9 Parties in Interest. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successors in interest), and not for the benefit of any other individual or entity.

11.10 No Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in making any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

11.11 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of one or both Parties has been materially altered or abridged by such holding and the Parties amend the Agreement by mutual consent.

11.12 Recordation. Consistent with Government Code Section 65868.5, the City Clerk shall cause a copy of this Agreement to be recorded against the Property in the Official Records of the Recorder's Office of Humboldt County no later than ten (10) days after the execution of the Agreement. Upon termination of this Agreement, a written statement acknowledging such termination shall be recorded in the Official Records of the Humboldt County Recorder.

11.13 Applicable Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.14 Notices. Any notice or communication required hereunder between the City and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated herein below as the Party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. A party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address

in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Arcata
736 F Street
Arcata, CA 95521
Attention: City Manager
Telephone: (707) 822-5953
Facsimile: (707) 822-8018

With a copy to: Law Office of Nancy Diamond
822 G. St. #3
Arcata, CA 95521
Attention: Nancy Diamond
Telephone: (707) 826-8540
Facsimile: (707) 826-8541

If to Developer: Foster Avenue, LLC
_____, CA 95521
Telephone: _____

With a copy to:

11.15 Authority to Execute. Developer warrants and represents that (i) Developer is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement, (iv) Developer's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other Agreement to which Developer is bound, and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware which could prevent Developer from entering into or performing its obligation's set forth in this Agreement.

11.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.


11.17 Exhibits. The attached exhibits are made a part hereof by this reference, all of which constitute the entire understanding and agreement of the Parties. Said exhibits are identified as follows:

1. Exhibit A: Legal Description

IN WITNESS WHEREOF, City and Developer have each executed this Agreement as of the date first written above.

[Signatures on the following page]

CITY:
CITY OF ARCATA,
A municipal corporation

By: 
Name: Karen T. Diemer
Its: City Manager
Date: June 3, 2020

ACKNOWLEDGMENT

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Humboldt)

On June 4, 2020 before me, Danielle Allred, a notary public,
(insert name and title of the officer)

personally appeared Karen Diemer,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~
subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in
~~his~~/~~her~~/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/~~her~~/~~their~~ signature~~(s)~~ on the instrument the
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



DEVELOPER:

Foster Avenue, LLC

By

Name: Daniel J. Johnson

Its: Member

Date: 05/27/2020

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Humboldt

On May 27, 2020 before me, Hailey Del Grande, Notary Public
(insert name and title of the officer)

personally appeared Daniel J. Johnson
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Hailey Del Grande (Seal)



EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT A

DESCRIPTION

That real property situate in the County of Humboldt, State of California, described as follows:

Those portions of the Southeast Quarter of the Southwest Quarter of Section 20, and the East Half of the Northwest Quarter of Section 29, Township 6 North, Range 1 East, Humboldt Meridian, described as follows:

PARCEL ONE:

BEGINNING at a point located North 76 degrees 23 minutes West, 508.03 feet from the quarter section corner on the North line of said Section 29, said point also being the Northeast corner of the parcel of land described in Parcel One of the Deed to D.S. Norris, et al, recorded August 22, 1951, in Book 179 of Official Records, Page 639;

thence North 76 degrees 23 minutes West along the Northeasterly line of said lands, 449.27 feet to the Northwest corner thereof;

thence South 15 degrees 26 minutes West along the Northwesterly line of said lands, 1372.6 feet to the North line of the parcel conveyed to Humboldt Northern Railroad Company by Deeds recorded in Book 121 of Deeds, Page 239, and in Book 199 of Deeds, Page 403, Humboldt County Records;

thence along the North line of said railroad, South 70 degrees 26 minutes East, 519.19 feet and Southeasterly along the arc of a curve to the right, said curve having a radius of 2312 feet, a central angle of 4 degrees 09 minutes 18 seconds, a distance of 167.66 feet to the Southwest corner of the land described in the Deed from Van DeNor Lumber Company, Inc., a corporation, to Chester H. Spiering and wife, recorded March 30, 1961, in Book 629 of Official Records, Page 300, Humboldt County Records;

thence along the Northwesterly line of said last mentioned lands, the following courses and distances:

North 11 degrees 26 minutes 12 seconds West, 371.67 feet;

North 08 degrees 02 minutes 06 seconds East, 100.72 feet;

North 03 degrees 35 minutes 26 seconds East, 98.41 feet;

North 16 degrees 10 minutes 21 seconds East, 115.61 feet;

North 34 degrees 17 minutes 23 seconds East, 117.76 feet;

North 62 degrees 51 minutes 05 seconds East, 105.44 feet to the Southwesterly line of the land described in Parcel One on the Deed to Westwood Developers, a limited partnership, recorded July 6, 1966, in Book 889 of Official Records, Page 12, Humboldt County Records;

North 86 degrees 50 minutes West along said Southwesterly line 118.03 feet to the Southwest corner of said lands;
and

thence North 13 degrees 27 minutes 44 seconds East along the Northwesterly line of said last mentioned lands, 639.72 feet to the point of beginning.